

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MELVIN SMITH and STAN FOWLER,

Plaintiffs,¹

v.

No. 15-cv-1153 SMV/GBW

AUTO-OWNERS INSURANCE COMPANY,

Defendant.

ORDER

THIS MATTER is before the Court on the competing motions regarding the settlement agreement reached between the parties in February of 2018. [Docs. 176, 180]. The motions are fully briefed, [Docs. 179, 181, 182, 183, 189, 190]. The Court heard oral argument on May 23, 2018. The Court will deny Plaintiff's motion [Doc. 176] and grant Defendant's motion [Doc. 180] to the extent consistent with the specific rulings herein. The Court will also deny Plaintiff's Emergency Motion to Strike Exhibits to Defendant's Supplemental Authority [Doc. 190].

Findings

The Court finds that there is an enforceable settlement agreement that includes the execution of a motion and order of dismissal with prejudice, as well as the execution of a "settlement agreement and release."²

¹ Judgment was entered in favor of Plaintiff Stan Fowler on November 2, 2016, after he accepted Defendant's offer of judgment. [Doc. 84]. Melvin Smith is the sole remaining Plaintiff in this case.

² The Court so finds without reliance on Defendant's supplemental authority [Doc. 188].

The Court further finds that there was no agreement on an indemnification provision in the “settlement agreement and release.” The Court finds that an indemnification provision is not material to the enforceable agreement to settle.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

- Defendant must issue a check for \$75,000, payable to “Melvin Smith and Sherman & Sherman” and submit it to chambers. The check must be *received* by chambers **no later than June 8, 2018.**
- Plaintiff Melvin Smith must sign the release at [Doc. 182-1] at 1 and provide it to chambers. Plaintiff’s counsel, Mr. Sherman, must complete a W-9 for his law firm and provide it to chambers. Mr. Sherman must sign the Stipulated Order of Dismissal with Prejudice found at [Doc. 183-1] at 9 and provide it to chambers. **The release signed by Plaintiff Melvin Smith, the completed W-9, and the signed Stipulated Order of Dismissal with Prejudice must all be *received* by chambers no later than June 8, 2018.**
- If by June 8, 2018, chambers has not *received* all of the following: the \$75,000 check, the release signed by Plaintiff Melvin Smith, the completed W-9, *and* the signed Stipulated Order of Dismissal with Prejudice, an **in-person show cause hearing** will be held on **June 22, 2018, at 9:00 a.m.**, in Las Cruces, New Mexico. If Plaintiff Melvin Smith has failed to comply with this order, he will be required to appear in person in Las Cruces to show good cause why he should not be held in contempt and subject to sanctions up to and including monetary sanctions and dismissal of all claims with prejudice.

IT IS FURTHER ORDERED that:

- Plaintiff’s request for judgment to be entered in his favor is denied. *See* [Doc. 176] at 1, 2, 3.


- All of Plaintiff's requests related to former co-Plaintiff Fowler are denied. *See* [Doc. 176] at 1.
- Plaintiff's motions to strike are denied. *See* [Doc. 181] at 6; [Doc. 190].
- Defendant's request that the Court order Plaintiff to sign a release is granted to the extent consistent with the Court's specific instructions herein. *See* [Doc. 183] at 5.
- Defendant's request that the Court order Plaintiff's counsel to provide a W-9 for his law firm is granted to the extent consistent with the Court's specific instructions. *See* [Doc. 180] at 5; [Doc. 183] at 7.
- No fees or costs will be awarded.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Enter a Judgment in Favor of the Plaintiff due to the Settlement of the Case and Alternatives [Doc. 176] is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion to Enforce the Settlement Agreement [Doc. 180] is **GRANTED** to the extent provided herein.

IT IS FURTHER ORDERED that Plaintiff's Emergency Motion to Strike Exhibits to Defendant's Supplemental Authority [Doc. 190] is **DENIED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent